

07-CV-05400-CMP

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 AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

NORTHWEST SHEET METAL WORKERS  
 ORGANIZATIONAL TRUST; JIM CRITCHLOW, PETER  
 FLUETSCH, BARON DERR, DON WHITE, JEFF STOWE,  
 FLOYD BURCHETT, KEITH NEMITZ and BRAD  
 STEPHENS, Trustees of the Northwest Sheet Metal Workers  
 Organizational Trust; NORTHWEST SHEET METAL  
 WORKERS WELFARE FUND; RANDY FRISBEE, BARON  
 DERR, JERRY KINSLEY, BRENT MOORE, JOHN  
 GARRETT, BRAD STEPHENS, RICK SCHRADER, JIM  
 RYAN, TIM KESTER and JOHN PAUSTIAN, Trustees of  
 Northwest Sheet Metal Workers Welfare Fund; NORTHWEST  
 SHEET METAL WORKERS PENSION FUND; ROBERT M.  
 CARLTON, JR., JOHN GARRETT, JIM RYAN, KEITH  
 NEMITZ, BARON DERR, JERRY FREEL, TIM KESTER,  
 BOB HIGHTOWER, BRAD STEPHENS, and BRENT  
 MOORE, Trustees of Northwest Sheet Metal Workers Pension  
 Fund; NORTHWEST SHEET METAL WORKERS  
 SUPPLEMENTAL PENSION TRUST; ROBERT M.  
 CARLTON, JR., JOHN GARRETT, JIM RYAN, KEITH  
 NEMITZ, BARON DERR, JERRY FREEL, TIM KESTER,  
 BOB HIGHTOWER, Trustees of Northwest Sheet Metal  
 Workers Supplemental Pension Trust; WESTERN  
 WASHINGTON SHEET METAL TRAINING TRUST; DOUG  
 NUGENT, BRAD STEPHENS, RICK HERMANSON, BRIAN  
 FLUETSCH, STEVE JOHNSON, DAVE GOUGH, ERIC  
 MARTINSON, JEFF STOWE, LANCE DEYETTE and STEVE  
 MUSSER, Trustees of Western Washington Sheet Metal  
 Training Trust; NORTHWEST SHEET METAL LABOR  
 MANAGEMENT COOPERATION TRUST; BRAD  
 STEPHENS, TIM CARTER, JEFF STOWE, BARON DERR  
 JUNE NAILLON and DEAN FOX, Trustees of Northwest Sheet  
 Metal Labor Management Cooperation Trust and SHEET  
 METAL WORKERS LOCAL 66,

C 07-5400 RJB

No.

**COMPLAINT FOR  
MONIES DUE AND  
FOR INJUNCTIVE  
RELIEF**

COMPLAINT - 1

ORIGINAL

 ROBBLEE BRENNAN & DETWILER  
 ATTORNEYS at LAW

 1620 METROPOLITAN PARK TOWERS  
 1100 OLIVE WAY · SEATTLE, WA 98101-1827  
 206.467.6700 · 206.467.7589 facsimile

Sum. F.S.S. -  
 SEA 11165-

Plaintiffs,

v.

TACOMA ARCHITECTURAL METALS, LLC,

Defendant.

### JURISDICTION AND VENUE

1. This is an action brought pursuant to Section 301 of the National Labor Relations Act, as amended (hereafter "the Act"), 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1974 (hereafter "ERISA"), 29 U.S.C. § 1132. Jurisdiction and venue are conferred upon this Court by 29 U.S.C. § 185(a), 1132(a), (e) and (f).

### PARTIES

2. Plaintiff NORTHWEST SHEET METAL WORKERS ORGANIZATIONAL TRUST (hereafter "Northwest Organizational Trust") is a labor-management trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Northwest Organizational Trust is administered in the State of Washington from its place of business at 33919 9<sup>th</sup> Avenue South, Suite 103, Federal Way, WA 98003.

3. Plaintiffs JIM CRITCHLOW, PETER FLUETSCH, BARON DERR, DON WHITE, JEFF STOWE, FLOYD BURCHETT, KEITH NEMITZ and BRAD STEPHENS (hereafter "Northwest Organizational Trust Trustees") are the Trustees of plaintiff Northwest Organizational Trust. They have been appointed and qualified as trustees pursuant to the Trust Agreement establishing plaintiff Northwest Organizational Trust.

1           4.     Plaintiff NORTHWEST SHEET METAL WORKERS WELFARE FUND  
2 (hereafter "Welfare Trust") is a labor-management health and welfare trust fund created pursuant  
3 to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its  
4 own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Welfare Fund is  
5 administered in the State of Washington.

6           5.     Plaintiffs RANDY FRISBEE, BARON DERR, JERRY KINSLEY, BRENT  
7 MOORE, JOHN GARRETT, BRAD STEPHENS, RICK SCHRADER, JIM RYAN, TIM  
8 KESTER and JOHN PAUSTIAN (hereafter "Welfare Trustees") are the Trustees of plaintiff  
9 Welfare Fund. They have been appointed and qualified as trustees pursuant to the Trust  
10 Agreement establishing plaintiff Welfare Fund.  
11

12           6.     Plaintiff NORTHWEST SHEET METAL WORKERS PENSION FUND  
13 (hereafter "Pension Trust") is a labor-management pension trust fund created pursuant to the  
14 provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its own  
15 name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Pension Fund is  
16 administered in the State of Washington.

17           7.     Plaintiffs ROBERT M. CARLTON, JR., JOHN GARRETT, JIM RYAN, KEITH  
18 NEMITZ, BARON DERR, JERRY FREEL, TIM KESTER, BOB HIGHTOWER, BRAD  
19 STEPHENS, and BRENT MOORE (hereafter "Pension Trustees") are the Trustees of plaintiff  
20 Pension Fund. They have been appointed and qualified as trustees pursuant to the Trust  
21 Agreement establishing plaintiff Pension Fund.

22           8.     Plaintiff NORTHWEST SHEET METAL WORKERS SUPPLEMENTAL  
23 PENSION TRUST (hereafter "Supplemental Pension Trust") is a labor-management pension  
24 trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c),  
25

1 and authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1).

2 Plaintiff Pension Fund is administered in the State of Washington.

3 9. Plaintiffs ROBERT M. CARLTON, JR., JOHN GARRETT, JIM RYAN, KEITH  
4 NEMITZ, BARON DERR, JERRY FREEL, TIM KESTER, BOB HIGHTOWER, BRAD  
5 STEPHENS, and BRENT MOORE (hereafter "Supplemental Pension Trust Trustees") are the  
6 Trustees of plaintiff Supplemental Pension Trust. They have been appointed and qualified as  
7 trustees pursuant to the Trust Agreement establishing plaintiff Supplemental Pension Trust  
8 Trustees.  
9

10 10. Plaintiff WESTERN WASHINGTON SHEET METAL TRAINING TRUST  
11 (hereafter "Training Trust") is a labor management training fund created pursuant to the  
12 provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its own  
13 name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Training Trust is  
14 administered in the State of Washington.

15 11. Plaintiffs DOUG NUGENT, BRAD STEPHENS, RICK HERMANSON, BRIAN  
16 FLUETSCH, STEVE JOHNSON, DAVE GOUGH, ERIC MARTINSON, JEFF STOWE,  
17 LANCE DEYETTE and STEVE MUSSER, (hereafter "Training Trust Trustees") are the  
18 Trustees of plaintiff Training Trust. They have been appointed and qualified as trustees pursuant  
19 to the Trust Agreement establishing plaintiff Training Trust.  
20

21 12. Plaintiff NORTHWEST SHEET METAL LABOR MANAGEMENT  
22 COOPERATION TRUST (hereafter "Cooperation Trust") is a labor-management trust fund  
23 created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and  
24 authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1).  
25 Plaintiff Cooperation Trust is administered in the State of Washington.

13. Plaintiffs BRAD STEPHENS, TIM CARTER, JEFF STOWE, BARON DERR JUNE NAILLON and DEAN FOX (hereafter "Cooperation Trust Trustees") are the Trustees of plaintiff Training Trust. They have been appointed and qualified as trustees pursuant to the Trust Agreement establishing plaintiff Cooperation Trust.

14. Plaintiff SHEET METAL WORKERS LOCAL 66 ("Local 66") is a labor organization. It represents for purposes of collective bargaining persons who are employed in the construction industry. That industry affects commerce within the meaning of the Act.

15. Defendant TACOMA ARCHITECTURAL METALS, LLC ("Defendant"), is a sheet metal contractor and is a party to a collective bargaining agreement with Local 66. That industry affects commerce within the meaning of the Act. Defendant has employed or does employ persons represented by Local 66. Defendant's principal place of business is 7914 99th Ave SW, Tacoma, WA 98497.

#### CLAIM FOR RELIEF

16. Plaintiffs incorporate by reference as though set forth fully herein paragraphs 1 through 15 above.

17. The collective bargaining agreement between Defendant and Local 66 was in effect at all times material hereto. By that agreement Defendant became obligated to make monthly contributions to plaintiffs Welfare, Pension, Supplemental Pension, Organizational, Cooperation and Training Trusts on behalf of employees represented by Local 66.

18. Defendant has also agreed to and has received money from its Local 66 employees, as part of the employees' after-tax wages, which Defendant is and was obligated on a monthly basis to deposit into each employee's account, or submit to Local 66 as part of each employee's dues obligation. Defendant holds such money in trust.

1           19.    Payments due to the Welfare, Pension, Supplemental Pension, Organizational,  
2   Cooperation and Training Trusts, and the amounts of employees' after-tax wages held in trust by  
3   Defendant, are calculated pursuant to a contribution reporting form required to be prepared  
4   monthly by Defendant.

5           20.    The completed contribution reporting form and accompanying payment are due at  
6   the Welfare office and address within fifteen (15) days after the end of each calendar month and  
7   are considered delinquent if not received within 20 days after the end of each calendar month.

8           21.    For the period beginning May 2007 and continuing to the present, Defendant has  
9   failed either timely or entirely to file its contribution reporting forms and to make payments due  
10   to plaintiffs despite its obligation under the collective bargaining agreements to do so and despite  
11   demand by plaintiffs.

12           22.    The dollar amount due plaintiffs cannot be ascertained without reviewing  
13   defendant's employment records for the period in question.

14           23.    Unless ordered by this Court, Defendant will continue to refuse to file  
15   contribution reporting forms and to pay to the Welfare, Pension, Supplemental Pension,  
16   Organizational, Cooperation and Training Trusts, and Local 66 the payments due them. As a  
17   result, plaintiffs will be irreparably damaged.

18           24.    In addition to the unpaid contributions, plaintiffs are entitled to the following  
19   pursuant to Section 502(g) of ERISA, 29 U.S.C. § 1132(g), and Section 301 of the Act, 29  
20   U.S.C. § 185, as amended:

21                   (a)    Interest on the unpaid or delinquent contributions;

22                   (b)    An amount equal to the greater of:

23                           (i)   interest on the unpaid contributions (hereinafter "penalty"), or  
24  
25

(ii) liquidated damages in an amount equal to 20% of the amount awarded as unpaid or delinquent contributions, as provided for in the Trust Agreement (hereinafter "liquidated damages"); and

(c) Reasonable attorneys' fees and the costs of this action.

25. A copy of this complaint will be served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by ERISA, 29 U.S.C. § 1132(h).

WHEREFORE, plaintiffs demand judgment against the Defendant:


1. Obliging Defendant to pay to plaintiffs Welfare, Pension, Supplemental Pension, Organizational, Cooperation and Training Trusts, and Local 66, the full amount of contributions owing to it for the period from May 2007 to date of judgment, with the proper amount of interest and with a penalty or liquidated damages as established by Section 502(g) of ERISA, 29 U.S.C. § 1132(g), the Trust Agreement, and the collective bargaining agreement;

2. Restraining and enjoining Defendant, its officers, agents, servants, attorneys, and all persons acting on its behalf or in conjunction with it from: (a) refusing to file contribution reporting forms due to plaintiffs Welfare, Pension, Supplemental Pension, Organizational, Cooperation and Training Trusts, and Local 66 for the period from May 2007 to the date of judgment, and for all periods thereafter for which Defendant is obligated to file such reports under the terms of the collective bargaining agreement, and (b) refusing to pay to plaintiffs Welfare, Pension, Supplemental Pension, Organizational, Cooperation and Training Trusts, and Local 66 all funds, including interest, penalties, and liquidated damages, due for the period May 2007 to the date of judgment, and for all periods thereafter for which Defendant is obligated to make payments under the terms of the collective bargaining agreement;

4. Granting plaintiffs such further and other relief as may be just and proper.

4. Granting plaintiffs such further and other relief as may be just and proper.

DATED this 3th day of August, 2007.

 Lcv  
 Mark E. Brennan, WSBA No. 8389  
 ROBBLEE BRENNAN & DETWILER, PLLP  
 Attorneys for Plaintiffs

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